

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	
FM Broadcast Stations.)	
)	
(Arapaho, Oklahoma))	MB Docket No. <u>05-136</u>
)	RM-11163
)	
(Big Spring, Texas))	MB Docket No. 05-137
)	RM-11161
)	
(Cameron, Louisiana))	MB Docket No. 05-138
)	RM-11162

NOTICE OF PROPOSED RULE MAKING

Adopted: March 21, 2005**Released: March 23, 2005****Comment Date: May 10, 2005****Reply Date: May 25, 2005**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a multiple docket *Notice of Proposed Rule Making* setting forth three separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.¹ With respect to each proposal, the petitioner has stated that he will apply for the requested channel, if allotted. Each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket *Notice of Proposed Rule Making* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rule Making*. Each proposal has its own docket and rulemaking number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

¹ See 47 C.F.R. §73.202(b).

A. MB Docket No. 05-136; RM-11163

Petitioner: Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Proposal: Allot Channel 251C3 at Arapaho, Oklahoma, as the community's first local service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Arapaho, Oklahoma	—	251C3

Coordinates: 35-28-00 NL and 98-55-00 WL

Additional Information: The proposed allotment of Channel 251C3 at Arapaho requires a site restriction of 13.1 km (8.1 miles) south of the community at the coordinates indicated above. Petitioner states that Arapaho is an incorporated community with a U.S. Census 2000 population of 748 persons. Petitioner further states that Arapaho has a mayor, city hall, police department, and a number of local churches.

FCC Contact: Helen McLean (202) 418-2738

B. MB Docket No. 05-137; RM-11161

Petitioner: Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Proposal: Allot Channel 265C3 at Big Spring, Texas, as the community's sixth local service.²

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Big Spring, Texas	232C3, 239C2	232C3, 239C2, 265C3

Coordinates: 32-12-00 NL and 101-18-00 WL

Additional Information: Channel 265C3 can be allotted to Big Spring with a site restriction of 17.7 km (11.0 miles) east of the community at the reference coordinates indicated above. Because this site is within 320 kilometers (200 miles) of the Mexican border, concurrence of the Mexican government has been requested for the allotment.

FCC Contact: Helen McLean (202) 418-2738

² Commercial FM stations KBTS and KBST-FM, AM Stations KBYG and KBST, and noncommercial educational FM station KBCX are licensed to Big Spring, Texas.

C. MB Docket No. 05-138; RM-11162

Petitioner: Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Proposal: Allot Channel 296C3 at Cameron, Louisiana, as the community's first local service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Cameron, Louisiana	----	296C3

Coordinates: 29-47-48 NL and 93-19-30 WL

Additional Information: Channel 296C3 can be allotted to Cameron at the center of the city coordinates.³ Petitioner states that Cameron is a Census Designated Place ("CDP") in Cameron Parish, Louisiana with a U.S. Census 2000 population of 1,965 persons. Additionally, Petitioner states that the Cameron Police Jury is both a legislative and administrative body, and that Cameron has a fire department, public schools, and a number of local churches. Although the designation of an area as a CDP raises the presumption that an area is a "community" for allotment purposes, that presumption is rebuttable.⁴ We request that the Petitioner submit additional information demonstrating that Cameron is a "community" for allotment purposes. Community status may be proven by the testimony of local residents or by objective or subjective evidence indicating the existence of a community. Some examples of objective indications of community status include the existence of local government as well as social, economic, commercial, cultural, public service, or religious organizations that serve the community.⁵

FCC Contact: Helen McLean (202) 418-2738

3. Comments, reply comments, counterproposals and other pleadings filed in response to this *Notice of Proposed Rule Making* should reference the docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

³ Center city coordinates are preferable to Petitioner's proposed coordinates of 29-48-00 NL and 93-21-30 WL which required a site restriction.

⁴ See *Stock Island, Florida*, 8 FCC Rcd 343 (MMB 1993); *East Hemet, California, et al.*, 4 FCC Rcd 7895 (MMB 1989); and *Hannahs Mill and Milledgeville, Georgia*, 7 FCC Rcd 3944 (MMB 1992).

⁵ See *Hayfield, VA*, 12 FCC Rcd 16373 (MMB 1997) and *Kenansville, Florida*, 5 FCC Rcd 2663 (MMB 1990), *aff'd*, 10 FCC Rcd 9831 (1995).

4. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,⁶ interested parties may file comments on or before May 10, 2005, and reply comments on or before May 25, 2005, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner listed for each docket.

5. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁷ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. Section 3506(c)(4).

7. For further information concerning these proceedings, contact Helen McLean, Media Bureau, at (202) 418-2738. For purposes of these restricted notice and comment rule making proceedings, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the

⁶ See 47 C.F.R. §§1.415 and 1.419.

⁷ See *Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the Petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. **Showings Required.** Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. **Cut-off protection.** The following procedures will govern the consideration of filings in this proceeding:

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (*see* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. **Comments and Reply Comments; service.** Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. **Number of Copies.** In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. **Public Inspection of Filings.** All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.